

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellant,
v.
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES et al.,
Defendants-Appellees.

No. 21-1076

**STATUS REPORT AND CONSENT MOTION
TO CONTINUE TO HOLD APPEAL IN ABEYANCE**

On December 16, 2022, this Court granted defendants-appellees' motion to hold this appeal in abeyance for an additional 90 days from that date to give them time to review and evaluate the issues in this case. The Court directed defendants to file a status report on or before the end of that 90-day period concerning the further conduct of this appeal, and has since granted additional 90-day stays of the appeal.

Defendants' most recent status report noted that on February 2, 2023, they published a notice of proposed rulemaking that would "amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act, which requires non-grandfathered group health plans and non-grandfathered group or

individual health insurance coverage to cover certain contraceptive services without cost sharing.” U.S. Dep’t of the Treasury, U.S. Dep’t of Labor, & Dep’t of Health & Human Servs., Coverage of Certain Preventive Services Under the Affordable Care Act, 88 Fed. Reg. 7236 (Feb. 2, 2023), <https://federalregister.gov/documents/2023/02/02/2023-01981/coverage-of-certain-preventive-services-under-the-affordable-care-act>.

Defendants also reported that the comment period for the proposed rule closed on April 3, 2023. To allow time for a full evaluation of the more than 44,000 comments received, defendants respectfully request that the Court continue to hold the appeal in abeyance, with status reports due at 90-day intervals. We have consulted with counsel for the Commonwealth of Massachusetts, who have consented to this abeyance motion. The parties have agreed that either party may move to terminate the abeyance at any time by filing a motion seeking such relief.

Respectfully submitted,

SHARON SWINGLE

/s/ Lowell V. Sturgill Jr.

LOWELL V. STURGILL JR.

Attorneys, Appellate Staff

Civil Division, Room 7527

U.S. Department of Justice

950 Pennsylvania Avenue N.W.

Washington, D.C. 20530

(202) 514-3427

Lowell.Sturgill@usdoj.gov

April 2, 2024

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with the requirements of Rule 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Rule 27(d)(2)(A), because it contains 265 words, according to the count of Microsoft Word.

/s/ Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2024, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.